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PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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**NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,
IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
NELLORE.**

I.P.No.37/2014

Peruri Uma, ... Petitioner/Creditor

VS

1. Muchala Srinivasulu Reddy ... Respondents

2. Suvvari Kiran Kumar

3. Ch.Sudheer

4. Nerella Venkata Surya Prakash Rao

NOTICE

Notice is hereby given Under Section 9 of the Provincial Insolvency Act that the petitioner prays to adjudicate of Respondent No.1 as insolvent and the said petition is allowed.

Dated this the 31st day of July, 2019.

T. HARITHA,
*Principal Senior Civil Judge,
Nellore.*

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE :: NELLOREWednesday, this the 31st day of July. 2019.**I.P. No,37/2Q14**

Peruri Uma. W/o.Narasimha Rao.

Hindu, aged about 45 years. Housewife.

Residing at 4/325. Main Road. Rajampet.

YSR Kadapa District.

... Petitioner/Creditor

Vs.

1. Muchala Srinivasulu Reddy. S/o.LateRamana Reddy.

Hindu, aged about 49 years. Business.

Residing at 24-2-1873. 2nd Cross Road,

Behind Venkateswaraswami Temple.

Magunta Layout. Nellore City.

2. Suvvari Kiran Kumar. S/o.Sudhakar Rao.

Hindu, aged about 36 years. Property Owner. .

Residing at Flat No.202. Ourhome Apartments.

Gangasthan, Dhulapalli, Quthbullapur.

Hyderabad. Ranga Reddy - 500014.

Andhra Pradesh.

3. Ch.Sudheer. S/o.C.V.S.Gupta.

Hindu, aged about 46 years. Property Owner,

Residing at Balaji Heights. Flat No.204,

B-Block. 24-11 Saraswathi Nagar,

District Museum. Dargamitta. Nellore City.

4. Nerella Venkata Surya Prakash Rao.

S/o.N.Venkateswarlu. Hindu, aged about 57 years.

Property owner.

Residing at 101A Atma Apartments.

Near MES College. 10th Main.13th Cross Malleswaram.

Bangalore - 560 003, Karnataka State.

Respondents

This petition is coming on 06-06*2019 before me for final hearing in the presence of Sri. N.Sreenivasulu Reddy. Advocate for the petitioner and the 1st respondent remained exparte, and of Sri T.V.Srinivasa Rao. Advocate for respondent Nos.2 to 4. and this matter having stood over till this day for consideration, this Court delivered the following:

ORDER

The Petitioner/Creditor filed this insolvency petition against the respondents 1 to 4 U/Sec.9 of Provincial Insolvency Act. 1920 to adjudicate the 1st respondent as an insolvent, to set aside the three sale deeds dated 07-02-2014 executed by the 1st respondent in favour of the respondent Nos.2 to 4 in respect of Petition "A" schedule property bearing Documents Nos.1342/2014, 1343/2014 and 1344/2014 on the file Sriperumbudur. State of Tamilnadu and to direct the Official Receiver. Nellore to take possession of item Nos.2 to 5 of Petition "A" Schedule property and to deal with the same under the provisions of Provincial Insolvency Act and for costs.

2) **The brief averments in the insolvency petition are as follows:-** The 1st respondent borrowed a sum of Rs.6.00.000/* from the petitioner for his business purpose on 07.07.2009 and executed a promissory note on the same day in her favour at Nellore agreeing to repay. the same with interest at 30% per annum compoundable by the end of every year. , 1st respondent paid Rs. 1.80.000/- Rs. 1.80.000/- and Rs. 1.80.000/- on 07-07-2010. 07-07-2011 and 07-07-2011 respectively to the petitioner towards interest and duly endorsed the said payments and signed on the back of the said promissory note. The 1st respondent borrowed a sum of Rs.5.00.000/- from the petitioner for his business purpose on 21.08.2009 and executed a promissory note on the same day in her favour at Nellore agreeing to repay the same with interest at 30% per annum compoundable by the end of every year. 1st respondent paid Rs.1.50.000/- Rs.1.50.000/- and Rs.1.50.000/- on 21-08-2010. 21-08-2011 and 21-08-2011 respectively to the petitioner towards interest and duly endorsed the said payments and signed on the back of the said promissory note. The above mentioned promissory notes were scribed by the 1st respondent with his Own hand by filing the blanks in printed forms. The said promissory notes were executed by the 1st respondent and part payments referred above were made by the 1st respondent at Nellore including relevant endorsements. The above mentioned two promissory notes were duly signed by Menta Hari venkateswara Rao and S.Ramaiah an attesting witnesses at Nellore. The 1st respondent with a view to defraud his creditors including the petitioner herein, has mortgaged Item No.1 of Petition "A" Schedule property to State Bank of India, Town Branch, Nellore and sold Item No.2 of petition "A" Schedule property to 2nd respondent herein under a registered sale deed dt.07-02-2014 bearing Document No.1342/2014 for a sum of Rs.13,95,200/- and also Sold Item No.3 of Petition "A" Schedule Property to 3rd respondent under a registered sale deed dt.07-02-2014 bearing Document NO.1343/2014 for a sum of Rs.10,46,400/- and also sold Item No.4 of Petition "A" Schedule property to the 4th respondent herein, under a registered sale deed dt.07-02-2014 bearing Document No. 1344/2014 for a sum of Rs 3,48,800/- and item No 5 of Petition "A" Schedule property also encumbered and there is no scope to realize the debts of petitioner in full. The 1st respondent has not discharged the debts of the petitioner with the said sale proceeds. There is no collusion between the petitioner and the respondents in filing this petition. The

debts due to the petitioner is more than Rs.500/-. Hence, this petition is maintainable. Creation of equitable mortgage over Item No.1 of Petition "A" Schedule property in favour of State Bank of India, Town Branch. Nellore and alienation of Item Nos.2 to 4 of Petition "A" schedule property in favour of respondents 2 to 4 respectively amounts an act of insolvency with an Intent to evade payment of amount to the petition. Hence, the petitioner is constrained to file this petition to set aside the above sale deeds and declare the 1st respondent as insolvent. This petition filed within the period of 90 days from 07-02-2014. The petitioner got issued registered lawyer notice dt.21-04-2014 to all the respondents. The notice sent to 1st respondent was returned with postal endorsement that addressee left without instructions. The notices sent to respondents 3 and 4 were served and the notice sent to 2 respondent is yet to be received. As per Section.8 of Provincial Insolvency Act. no insolvency petition maintainable against Bank. Thus, State Bank of Indian, Town Branch, Nellore is not shows as party to this petition. Prays to allow the petition.

3) The 1st respondent remained exparte.

4) The 4th respondent filed counter and the respondents 2 and 3 adopted the counter of the 4th respondent. The brief averments of the counter of the 4th respondent are as follows :- He denied the contents of the petition and submitted that these respondents 2 to 4 were bonafide purchasers much particularly this respondent is also a bonafide purchaser and their purchase is open to all including the some of the creditors of 1st respondent. But nobody raised any objection because of the reason that as on the date of alleged sale transaction the 1st respondent is in high solvent state having other properties, such as sale deed dt.10-11-2010 under Doc.No10998/2010 at the office of Sriperambadur. This 1st respondent, to the knowledge of the respondent, did not file any insolvency petition before any competent court. This fact itself is a clinching proof of the fact that it is 1st respondent is in solvent state. Therefore, when the respondent is in solvent state as on the date of alleged sale transactions, the above insolvency proceedings are unsustainable. Further petitioner did not obtain any valid decree as on date of presentation of above proceedings. Thus, the above insolvency proceedings are not maintainable. Mere Ming of the insolvency proceedings within 90 days from the date of alleged sale transaction. It is settled law that as on date of initiating insolvency proceedings under Sec.9 of Provincial Insolvency Act of 1920 that creditor must have an enforceable debt determined by way of decree. Petitioners shall also prove the fact there should not be any other properties to the debtor. In the list of documents notary attested promissory notes were filed. Notary cannot attest the copies of the documents covered under N1 Act. Therefore, without document initiating the proceedings was also vitiating the claim of petition. Prays to dismiss the petition.

5) During enquiry, the petitioner gave her evidence as PW.1 and examined P.Narasimha Rao (Husband of PW.1) as PW.2 and got marked Exs.P1 to P17 and also examined D.V.Nageswara Rao. Official Receiver as PW.3 and got marked through PW.3

Exs.X1 to X21. Petitioner evidence was closed. On the other hand, the 3rd and 4th respondents examined as RWs.1 and 2 and Exs.R1 to R3 are marked through RW2. 1st respondent remained exparte. Respondents evidence closed.

6) Heard both sides.

7) Now. the point for determination are :

“Whether the 1st respondent committed the act of insolvency, he is liable to be adjudicated as insolvent by alienating the Item Nos.2 to 4 of petition “A” Schedule Property to the respondents Nos.2 to 4, as prayed for?

POINT :-

8) Firstly, the petitioner has to prove there is a Debtor and Creditor relationship between the petitioner and 1st respondent. The petitioner herself examined as PW.1. She reiterated the contents in the petition In her chief examination affidavit. In support of her version, she filed a Decree and Judgment in OS No.154/2014 on the file of Hon’ble IV Addl. District Judge. Nellore. dt.02-05-2015 against the 1st respondent. 1st respondent did not dispute the debtor and creditor relationship between them. Thus, the 1st respondent not challenged the evidence of PW.1 and contents of Exs.A14 and A15 decree and judgment in OS No. 154/2014.

9) The Hon’ble High Court of A P in a case of **Gunapati Radha Krishna Reddy Vs. Cheemala Venkata Ramana and Others reported in 2010 (3) ALD 721**, held at Para No.6 it reads as follows:

“The I. P. filed by a creditor under Section.9 of the Act. however, stands on a different footing. Before he invokes the jurisdiction of the insolvency Court, there must exist the adjudication of the debt or the debts, vis-a-vis the proposed insolvent in his favour. That can be in the form of a decree passed by the competent Court of civil jurisdiction or an unequivocal declaration on the part of the proposed insolvent, before the proceedings are instituted. To put it differently, a creditor cannot institute proceedings under Section.9 of the Act. in the absence of any adjudication, as to the debts, or unequivocal admission thereof, by a person proposed to be declared as insolvent.”

The Hon’ble High Court of A.P in the above decision at Para No 9 observed as follows:-

“Firstly, it is not at all the function of an Insolvency Court to deal with the truth, legality or other matters, in relation to a promissory note Secondly, the 1st respondent has categorically stated that the promissory notes are not supported by any consideration.

As per the ratio laid down in the above said case, it is not the duty of the Insolvency Court to decide the truth of the promissory notes filed by the petitioner 1st respondent did not deny the promissory notes stating they are not supported by any consideration. The petitioner herein filed suit for recovery of money on the strength of the promissory notes

and after payment of requisite amount of Court Fee. After trial the competent court decreed the suit in favour of the petitioner stating the petitioner is entitled for recovery of amount due under the promissory notes against the 1st respondent. Necessity for the petitioner to seek declaration that the 1st respondent is an insolvent would have arisen. As the petitioner made an effort to recover the amount due to her and properties available with the 1st respondent were found to be inadequate. The 1st respondent did not file any counter stating that he had several movable and immovable properties apart from petition schedule property, he did not deny the fact. He do not have any properties sufficient to meet the amount due from him and the properties available with him were not inadequate. The petitioner will come within the purview of the definition of creditor, the rights of the petitioner were declared as Creditor against the debtor/1st respondent. The petitioner filed the petition within 90 days from the date of execution of registered sale deeds dt. 07-02-2014 with regard to the Item Nos.2 to 4 of Petition A' Schedule Property. The 1st respondent did not deny the fact. The contents of the petition stating he had adequate properties to discharge his debts. He did not deny the fact that the properties of the 1st respondent shall inadequate to debts due to the creditors. The contents of Exs.P14 and P15 decree and judgment in OS No.154/2014 on the file of Hon'ble IV Addl. District Judge. Nellore and evidence of PW.1 clearly shows and proves there is a debtor and creditor relationship between the petitioner and the 1st respondent.

10) Pw. 3/Official Receiver in his evidence categorically deposed, so many creditors filed IPs against the 1st respondent, he made correspondence and came to know that the properties of the 1st respondent are inadequate to meet the demand of his creditors. Exs.P16 and P17 are certified copies of Decreeal Order and Order in IP No.9/2014 on the file of Principal Senior Civil Judge. Nellore. The contents of Exs.P16 and P17 clearly shows and proves 1st respondent was already declared as insolvent in the Creditors IP filed by one Middi Annamma. Already the 1st respondent was declared as insolvent and the official receiver proceedings are pending before Official Receiver, IP No.9/2014 was filed on 29-01-2014. The registered sale deeds were executed on 07-02-2014. That means after filing of the IP. 1st respondent executed sale deeds in favour of respondents 2 to 4.

11) **Section.28(1) of Provincial Insolvency Act reads as follows :**

(1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors.

Section.28(2) of Provincial Insolvency Act reads as follows :

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act. no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during

the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose.

Section.28(7) of Provincial Insolvency Act reads as follows :

(7) An order of adjudication shall relate back to. and take effect from the date of the presentation of the petition on which it is made

As per Section.28(7) of Provincial Insolvency Act. 1920. an order of adjudication shall relate back to. and take effect from the date of the presentation of the petition on which it is made. That means as per Section.28(7) of Provincial Insolvency Act. 1920. the 1st respondent executed sale deeds in favour of respondents Nos.2 to 4. after insolvency proceedings came into effect, after adjudication, the sale deeds under respondents 2 to 4 also shall be declared to have been executed by an insolvent with a view to defraud the creditors and defeat the interest of the creditors, executed the sale deeds in favour of respondents 2 to 4. The said fact is an act of insolvent. The 1st respondent already declared as Insolvent in IP No.9/2014 on the file of Principal Senior Civil Judge, Nellore. In the last week also the 1st respondent filed IP under Sec 10 of Provincial insolvency Act stating the properties are inadequate to meet the demands of creditors and he may be declared as insolvent. The counsel for the respondents submitted already the 1st respondent declared as insolvent in IP N0.9/2014. Hence, the petition is not maintainable. The counsel for the petitioner relied on Section.15 of Provincial Insolvency Act. it reads as follows:-

Section. 15 of Provincial Insolvency Act :

15. Consolidation of petitions:- Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings of any of them, on such terms as the Court thinks fit.”

IP No.9/2014 and IP N0.37/2014 are filed one after another in the same year. Hence, those two petitions are maintainable in view of Section.15 of Provincial Insolvency Act.

As per Section.6(1) of Provincial Insolvency Act. a debtor commits an act of insolvency in each of the following cases, namely -

(b) If. in 2(Indian) or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors; 2(India) or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors.

12) As seen from the averments of the petition and contents of decree and judgment in OS NO 154/2014 and Decreetal order and Order in IP No.9/2014. it is clear the 1st respondent executed sale deeds in favour of respondents 2 to 4 with a view to defeat or delay his creditors. As on the date o’ filing of the petition the 1st respondent has been residing within the local jurisdiction of this Court or carrying on business. In the last

week also 1st respondent fled IP under Section. 10 of Provincial insolvency Act to declare him as an insolvent, that shows he is carrying on business or residing within the jurisdiction of this court. Thus court having jurisdiction to entertain IP proceedings.

13) In view of the above discussion, in view of the evidence of PWs.1 to 3. contents of Exs.P14 to P17, proves that 1st respondent committed an act of insolvency. As such the petitioner is entitled to adjudge the 1 respondent as insolvent and to vest the Item Nos.2 to 4 of petition "A" Schedule Properties to the Official Receiver for due administration. Though the petitioner sought the relief of cancellation of sale deeds, the same cannot done at this stage and appropriate orders to be passed in the application to be filed. Hence, the petitioner is entitled for the relief as prayed for.

14) In the result, the insolvency petition is allowed with costs by adjudging the 1st respondent as an insolvent.

As per Sec.27 of Insolvency Act. 1920. 1st respondent shall apply within 3 months from the date of this order for his discharge.

Publish an order of adjudication as per Sec.30 of Provincial Insolvency Act in Official Gazette with details of notice of order of adjudication stating the name, address, description of the insolvent, date of adjudication, the period within which the debtor shall apply for his discharge and the Court by which the adjudication is made in the manner as prescribed.

As per Sec.28 (2) of Provincial Insolvency Act, 1920 petition schedule property i.e., Item Nos.2 to 4 of Petition "A" schedule property belongs to 1st respondent/insolvent shall forthwith vest in the Court and which then upon vests in Official Receiver U/Sec.56 (1) of Provincial Insolvency Act, 1920. The possession also vests with the Official Receiver for due administrative and to take steps to cancel the ' registered sale deeds bearing Document Nos.1342/2004, 1343/2004 and 1344/2004, dated.07-02-2014 on the file of SRO, Sriperumbudur, State of Tamilnadu..

As per Sec.28(7) of Provincial Insolvency Act, 1920 after order of adjudication shall relate back to and take effect from the date of presentation of petition on which it is made i.e., 29.04.2014.

The Office is directed to forward copy of order to the Official Receiver.

For Ordering of publication made in Official Gazette. Call on 31-10-2019.

Dictated to the Stenographer, transcribed. by her corrected and pronounced by me in the open Court on this the 31st day of July, 2019.

T. HARITHA,

PRINCIPAL SENIOR CIVIL JUDGE,

NELLORE.

Dated : 31-07-2019.

APPENDIX OF EVIDENCE**WITNESSES EXAMINED****FOR PETITIONERS**

PW1: P.Uma

PW2: P.Narasimha Rao

FOR 3rd RESPONDENT:-

DW1: Ch.Sudheer

DW2: N.V.Surya Prakash Rao

PW3: D.V.Nageswara Rao

DOCUMENTS MARKED**FOR PETITIONERS :-**

Exhibit	Date		Description of document
P1	07-02-2014	:	Registration Copy of Registered Sale deed executed by R1 in favour of R2 for Rs. 13,95,200/- bearing Doc. No.1342/2014.
P2	07-02-2014	:	Registration Copy of Registered Sale deed executed by R1 in favour of R3 for Rs. 10,46,400/- bearing Doc.No.1343/2014.
P3	07-02-2014	:	Registration Copy of Registered Sale deed executed by R1 in favour of R4 for Rs 3,48,800/- bearing Doc.No.1344/2014.
P4	10-11-2010	:	Registration Copy of Registered Sale deed executed by T.S Jaishankar rep. By his GPA agents P.Ramachanderan and R.T.Chennappa in favour of 1 st respondent bearing Doc.No.10998/2010.
P5	21-04-2014	:	Office copy of legal notice issued by petitioner to the defendant.
P6	21-04-2014	:	Postal receipt bearing NO.RN677976080 relating to 1 st : respondent.
P7	21-04-2014	:	Postal receipt bearing NO.RN677976093 relating to 2 nd respondent.
P8	21-04-2014	:	Postal receipt bearing NO.RN677973120 relating to 3 rd respondent.
P9	21-04-2014	:	Postal receipt bearing No.RN677975963 relating to 4 th respondent
P10	...	:	Certified copy of unserved notice sent to 1 st respondent. (Original filed in OS No.154/2014 on the file of Hon'ble IV Additional District Judge . Nellore.)

P11	...	:	Postal tracking relating to notice sent to 2 nd respondent tracking downloaded from the website of postal website
P12	...	:	Postal tracking relating to notice sent 3 rd respondent tracking downloaded from the website of postal website.
P13	...	:	Postal tracking relating to notice sent to 4 th respondent tracking downloaded from the website of-postal website.
P14	02-05-2015	:	Certified copy of Decree in OS No 154/2014 on the file of Hon'ble IV Additional District Judge. Nellore
P15	02-05-2015	:	Certified copy of Judgment in OS No.154/2014 on the file of Hon'ble IV Additional District Judge, Nellore.
P16	30-04-2015	:	Certified copy of Decreetal Order in IP No.9/2014 on the file of Principal Senior Civil Judge, Nellore.
P17	30-04-2015	:	Certified copy of Order in IP No.9/2014 on the file of Principal Senior Civil Judge, Nellore.

DOCUMENTS MARKED THROUGH PW.3:-

Exhibit	Date		Description of document
X1	...		Petition filed by Pa lie Nagagovardhan Reddy.
X2	...		Petition filed by P.V.B.hemamalini.
X3	...		Petition filed by Duvvuru Lalithamma.
X4	...		Petition filed by Duvuru Dasaradharami Reddy.
X5	...		Petition filed by Duvvuru Sundararamireddy.
X6	...		Petition filed by Naga Nagireddy.
X7	...		Petition filed by Challa Krishna Reddy.
X8	...		Petition filed by K Mohan Singh.
X9	...		Petition filed by A.Mahesh Kumar Reddy
X10	...		Petition filed by Nagaraja Reddy.
X11	...		Petition filed by V.Sugunamma.
X12	...		Petition filed by B. Ramesh Reddy.
X13	...		Petition filed Dy Devakinandhan Kishore Reddy
X14	...		Petition filed by D.Sreelekha.
X15	...		Petition filed by Y.Nagendraprasad Reddy .
X16	...		Petition filed by Ch.Sudhakar Reddy.
X17	...		Petition filed by Palle G.Ramanamma.
X18	...		Petition filed by G.Rajeswari.
X19	...		Petition filed Y.Sailaja.

X20	25-04-2016	:	True copy of letter addressed to Branch Manager, SBI, Town Branch, Nellore.
X21	...	:	True copy of explanation of Manager, SBI, Town Branch, Nellore.

FOR RESPONDENT Nos.2 to 4 :-

Exhibit	Date		Description of document
R1	10.11.2010	:	Certified copy of Registered Sale deed dated.10-11-2010 executed by T. S. Jaya Sankar through his Power of Attorney agents P.Ramachandran and R.P. Chennappa in favour of 1 st respondent
R2	11-10-2018		Certificate of Encumbrance Certificate relating to Ex.R1.
R3	10-12-2018	:	Valuation Certificate issued by Sub - Registrar Office, Sriperumbudur along with Translation of Ex B3 dt. 12-12-2018.

Dated : 31-07-2019.

T. HARITHA,
Principal Senior Civil Judge,
Nellore.

Dis No : 593/19.

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